

**OPINION
79-234**

July 20, 1979 (OPINION)

Mr. John Romanick
States Attorney of McLean County
McLean County Courthouse
Washburn, North Dakota 58577

Dear Mr. Romanick:

This is in response to your letter of July 5, 1979, wherein you request an opinion of this office relative to improvements proposed pursuant to the provisions of chapter 11-28.2 of the North Dakota Century Code, as amended. You submit the following facts and questions in your letter:

At an annual meeting, the owners of property requested the Recreation Service District Commissioners to proceed with dredging Strawberry Lake. Certain questions have presented themselves in this regard and an Attorney General's opinion is requested on the following points:

Section 11-28.2-04 states

"All projects and services to be provided by a recreation service district shall first be approved by a majority of the qualified voters of the district affected by such special assessment and present and voting at an annual or special meeting called as provided in this chapter."

Does the above section mean that the project must be approved by a majority of the qualified voters of the district or a majority of those qualified voters present and voting at the annual or special meeting?

Section 11-28.2-04 provides that each recreation service district shall have authority to provide services "and to levy special assessments as may be necessary to provide such services."

Under section 11-28.2-04, is it possible for the Recreation Service District Commissioners to negotiate a specific contract with a firm to dredge the lake and have the voters vote on that specific contract or is it necessary for the commissioners to follow the provisions of chapter 40-22 and have plans and specifications prepared by an engineer together with estimates of the cost and to let the contract on bids?

With regard to your first question, you have noted the statute governing the required approval authorizing a project. You do not indicate whether there has been any question as to whether the proposed project is authorized by law for which reason we assume that it has been determined that it falls within the category of improvements specified by sections 11-28.2-01 and 11-28.2-04 of the North Dakota Century Code, as amended, and accordingly we will not

address that question. With regard to the approval of the project, as required by the statute, we believe that the majority vote required for authorization is determined from those persons having the three qualifications statutorily required, i.e., (1) they must be qualified voters of the district; (2) they must be affected by the special assessment; and, (3) they must be present and voting at an annual or special meeting called as provided by chapter 11-28.2 of the North Dakota Century Code, as amended. In practical application as the same relates to your specific question, this means that they must necessarily be "present and voting" in order to be included in the group from whom the majority is to be ascertained and from whom the approval need be attained. Those persons, otherwise qualified voters who are affected by the special assessments, but are not present and voting, would not be included in determining whether a majority vote has been accomplished since they have not met the complete specifications of the statute. To determine otherwise would effect a negative vote for all those not in attendance, contrary to the qualified electorate as established by the requirements of the statute.

With regard to your second question as to whether the recreation service district commissioners may negotiate a specific contract with a firm to dredge the lake, having the voters' vote on a specific contract or whether it is necessary for the commissioners to follow the provisions of chapter 40-22 of the North Dakota Century Code and have plans and specifications prepared by an engineer together with estimates of the cost and to let the contract on bids, we would note the provisions of section 11-28.2-04 of the North Dakota Century Code, as amended, which provides in part:

11-28.2-04. POWERS OF RECREATION SERVICE DISTRICTS - LEVYING OF SPECIAL ASSESSMENTS. - Each recreation service district established under the provisions of this chapter shall have the authority to provide police protection, sewer and water, garbage removal services, and public road construction and maintenance, in addition to that provided by the local governing body or other agency to summer homes, cottages, and other residences and establishments as may exist within its boundaries, and to provide for the improvement and control of the environmental quality of the recreation service district, and to levy special assessments as may be necessary to provide such services.

* * *

The levying of special assessments for sewer and water, garbage removal services, public road construction and maintenance, and improvement of environmental quality shall be levied against those parcels of property benefited in the manner provided by law for the levying of special assessments for municipalities and the costs of police protection may be levied in such manner. (Emphasis supplied).

* * *

Noting that the statute relates to "the levying of special assessments" and that the same shall be "levied against those parcels

of property benefited in the manner provided by law for the levying of special assessments for municipalities . . . ", we believe that only those provisions of law involving the levying of assessments against the parcels of property benefited are made applicable by the reference. We do not believe that all provisions relating to improvements by special assessment by municipalities would apply since clearly by their own terms are rendered inapplicable by subject matter and requirements which relate specifically to city officials. For this reason we are of the opinion that the requirement of section 11-28.2-04 of the North Dakota Century Code, as amended, providing that the levying of special assessments for the named specific improvements shall be levied against those parcels of property benefited in the manner provided by law for the levying of special assessments for municipalities and that such requirement does not contemplate other provisions or requirements which may be applicable to municipal improvements. For this reason we believe that the district commissioners may negotiate directly with a firm to accomplish the proposed project without the need for plans and specifications prepared by an engineer and without the requirement of letting the contract on bids. We would note, however, that this office has consistently strongly suggested in all instances that public funds are being expended, whether a specific requirement exists or not, that such contracts be let on bids to the lowest responsible bidder, to eliminate questions of impropriety or the shadows of irresponsible public fiscal management.

We trust that the foregoing general observations and comments will adequately set forth our opinion upon the matters submitted and that the same will be adequate for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General